Supreme Court of the United States

October Term, 1974

No. 73-1499

HAROLD LONGSHORE, FRAZIER RILEY, AND BONNIE BEDENBAUGH, INDIVIDUALLY AND AS OFFICERS OF THE HOLLYWOOD BOOSTER CLUB, AND AS REPRESENTATIVES OF THE CLASS OF PEOPLE BEING SERVED BY THE HOLLYWOOD SCHOOL IN SALUDA COUNTY, AND AS REPRESENTATIVE OF THE PARENTS, FRIENDS AND SUPPORTERS OF HOLLYWOOD SCHOOL, PETITIONERS.

IN RE: UNITED STATES OF AMERICA, PLAINTIFF,

versus

SALUDA COUNTY SCHOOL DISTRICT NO. 1 OF SALUDA COUNTY, SOUTH CAROLINA, AND A. L. BRADLEY, SUPERINTENDENT OF SCHOOLS OF SALUDA COUNTY, SCHOOL DISTRICT 1, SOUTH CAROLINA, DEFENDANTS.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for The Fourth Circuit

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FOR THE FOURTH CIRCUIT

The petitioners herein pray that a writ of *certiorari* issue to review that portion of the judgment of the United States Court of Appeals for the Fourth Circuit, *en banc*, entered in this proceeding on December 13, 1973, which ordered the district court to transfer the students from Hollywood High School to Saluda High School.

OPINIONS BELOW

The petitioners pray for a writ of *certiorari* as to the Order of the Fourth Circuit Court of Appeals, which appears as Appendix A hereto. The judgments of the district court leading up to the present time are listed as Appendices B through G.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit *en banc* was entered on December 13, 1973 (Appendix A). This Court's jurisdiction is invoked under 28 U. S. C. § 1254 (1) and Rule 20 of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED

1. Is it proper for the Court of Appeals to order a district court to close a high school and transfer the students therefrom to another high school where there is no showing nor any record of any constitutional violation?

2. Does a school board retain authority to make decisions concerning the operations of schools and attendance of children as long as such decisions are neither in violation of a court order or in violation of any person's constitutional rights?

CONSTITUTIONAL PROVISIONS INVOLVED

Article 10 of the United States Constitution:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

STATEMENT OF THE CASE

On January 26, 1970 (Appendix B), the district court issued an Order supplementing prior orders which brought about the desegregation of the public schools of Saluda County. This order provided for an attendance zone wherein all persons living within one zone would attend the school at Hollywood School, and persons living within the other zone would attend school in the schools in the town of Saluda.

The schools were operated in such manner and without objection by the government or from anyone else until a disagreement occurred locally between the patrons of Hollywood School and the Trustees of School District No. 1 of Saluda County. The basic of the disagreement was whether or not economies could be effected by consolidating the high school at Hollywood with the high school at Saluda. This disagreement resulted in a resolution being passed by the school board calling for the creation of a new school district to be known as Hollywood School District. The new district sought to be created was to be the identical attendance zone as was set forth in the desegregation order attached hereto as Appendix B. Under South Carolina law, taxes must be uniform throughout the territory to which the tax applies. *Smith v. Robertson,* 210 S. C. 99; 41 S. E. (2d) 631. A school district can not be taxed partly on one rate of tax and partly on another. For this reason it was thought that a new district was needed. A referendum was held wherein all of the voters living in the Hollywood area voted as to whether or not they desired to have a school district created. The results of this election were favorable and appropriate action was taken by the school district to create a new school district, which would afford the Hollywood area the means of collecting additional taxes neces-

sary to operate the school. Interim orders were issued by the court to permit the orderly operation of the schools. When the Justice Department entered objection to the creation of the new district under the Voting Rights Act, on February 22, 1973, (Appendix C) the district court ordered the control of the schools returned to the order of the court dated January 26, 1970,(Appendix B). This order specifically required all children living in the Hollywood area to attend school at Hollywood.

At this time, trustees of Saluda School District No. 1 petitioned the district court asking the court to clarify what authority the board of trustees had in the operation of the school. At the time the trustees desired to transfer the high school students from Hollywood to Saluda. In the order of the court dated July 17, 1973 (Appendix D) the district court ordered that the school trustees of School District No. 1 had all of the powers and authorities as are set forth in the laws of South Carolina, so long as the same are "exercised without discrimination based upon race." Specifically, it was decided in said order that the transfer of the students at Hollywood were within the power of the trustees. The court further said: "This court neither endorses nor rejects the proposed plan. The authority is in the Board of Trustees."

There was no requirement in the order or in any order since which requires the transfer of the students. The order merely said that the trustees had the right to make the transfer if they so desired.

On August 2, 1973, the district court ordered that three persons resume duties as members of the board of trustees of Saluda County District No. 2. Following this order (Appendix E), a public hearing was held and the school trustees of Saluda County District No. 1 decided that it would not be in the best interest of all persons concerned to close

the high school at Hollywood. Once again the school trustees attempted to create a school district in accordance with South Carolina law. Once again the district court issued an order to permit the orderly operation of the schools while a determination of the legality of this action was being made (Appendix F). The government moved to stay the order, and following the hearing issued by the district court of September 11, 1973, was made. (Appendix G.)

Specifically the court held:

> "There is no evidence before the court and the plaintiff could offer none, that any action taken or contemplated would disturb the desegregation already accomplished by this court in previous orders." (Appendix G.)

On appeal to the Fourth Circuit Court of Appeals, the Court of Appeals not only reversed the lower court but ordered the transfer of the high school students from Hollywood to Saluda.

Petitioners herein respectfully contend that desegregation has already been accomplished in the Saluda School District and that the transfer of the students from Hollywood to Saluda is not required by the constitutional holdings in any of the desegregation cases in that the segregation has already been dissolved and was satisfactorily done by the order of January 20, 1970 (Appendix B), which was not objected to by the Department of Justice.

This court held in *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1; 28 L. Ed. (2d) 554; 91 S. Ct. 1267:

> "School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need

> for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts."

In that case this court recognized that the courts originally hearing the cases best exercised judicial appraisal. It is especially appropriate at this point and time for courts not to arbitrarily order people to do things they do not wish to do where there is no constitutional requirement for such order. Additionally, the court further held in *Swan supra:*

> "In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults."

Petitioners herein respectfully submit that it was manifest error to close a high school simply because the Court thought it wise to do so unless there is a showing of some constitutional violation. The order and requirement that the school be closed is a greater violation of the civil rights of the parents and children attending said school than any possible benefits in the form of further desegregation. It is respectfully submitted that both black and white join in this petition.

REASONS FOR GRANTING WRIT

1. The Court below assumed the duties of the Board of Trustees in ordering the transfer of high school students from Hollywood to Saluda when there was no showing of any constitutional violation.

The district court held in its order of July 17, 1973, Appendix D of the plan to transfer the high school students

from Hollywood to Saluda: "The court neither endorses nor rejects the proposal plan. The authority is in the Board of Trustees." The government did not appeal this order, it therefore became the law of the case. It, therefore, follows that the action by the court below is manifestly contrary to its proper duty. The only thing the court below had before it for consideration was the order appealed from (Appendix F). There was no record made, no evidence offered, nor any other showing that there was any requirement in the name of desegregation to transfer the children from one school to the other.

2. That the court below was in error in ordering the children from Hollywood High School transferred to Saluda and at the same time permitted the elementary children to remain at Hollywood. Under the court's order of January 26, 1970, (Appendix B), the court created a zone of attendance which was not objected to by the Department of Justice. This order required all children living in that zone to attend school at Hollywood. The same is still in effect as applies to elementary school children, but no longer in effect as applies to high school children. It is completely illogical that the order of the court below was necessary to desegregate the schools of Saluda County as it only included the children in high school and exempted the children in elementary school. In effect, the court's order was to say that desegregation of the elementary school had been effected in the order of January 26, 1970, as applies to elementary children, but ineffective as it applies to high school children.

CONCLUSION

For these reasons, a writ of *certiorari* should issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

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